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10 Attorneys for Receiver  
Thomas A. Seaman

11  
12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14 **WESTERN DIVISION**

15 SECURITIES AND EXCHANGE  
COMMISSION,

16 Plaintiff,

17 v.

18 STEVE CHEN, USFIA, INC.,  
19 ALLIANCE FINANCIAL  
GROUP, INC., AMAUCTION, INC.,  
20 ABORELL MGMT I, LLC, ABORELL  
21 ADVISORS I, LLC, ABORELL  
REIT II, LLC, AHOME REAL  
22 ESTATE, LLC, ALLIANCE  
NGN, INC., APOLLO REIT I, INC.,  
23 APOLLO REIT II, LLC, AMKEY, INC.,  
24 US CHINA CONSULTATION  
ASSOCIATION, and QUAIL RANCH  
25 GOLF COURSE, LLC,

26 Defendants.  
27  
28

Case No. 2:15-cv-07425 RGK PLA

**NOTICE OF MOTION AND  
MOTION FOR (A) APPROVAL OF  
SALE OF RESIDENTIAL REAL  
PROPERTY (OAK MOUNTAIN  
PROPERTY), AND (B) AUTHORITY  
TO PAY BROKER'S COMMISSION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: April 24, 2017  
Time: 9:00 a.m.  
Ctrm.: 850  
Judge: Hon. R. Gary Klausner

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on April 24, 2017, at 9:00 a.m. in  
3 Courtroom 850 of the above-entitled Court, located at 255 East Temple Street,  
4 Los Angeles, California 90012-3332, Thomas A. Seaman ("Receiver"), the Court-  
5 appointed permanent receiver for Defendants USFIA, Inc., Alliance Financial  
6 Group, Inc., Amauction, Inc., Aborell Mgmt I, LLC, Aborell Advisors I, LLC,  
7 Aborell REIT II, LLC, Ahome Real Estate, LLC, Alliance NGN, Inc., Apollo  
8 REIT I, Inc., Apollo REIT II, LLC, Amkey, Inc., US China Consultation  
9 Association, Quail Ranch Golf Course, LLC, and their subsidiaries and affiliates  
10 (collectively, "Receivership Entities"), hereby moves the Court for (A) approval of  
11 sale of residential real property (Oak Mountain Property), and (B) authority to pay  
12 broker's commission ("Motion").

13 This Motion is based on this Notice of Motion and Motion, the attached  
14 Memorandum of Points and Authorities, the Declaration of Thomas A. Seaman, the  
15 documents and pleadings already on file in this action, and upon such further oral  
16 and documentary evidence as may be presented at the time of the hearing.

17 **Procedural Requirements:** If you oppose this Motion, you are required to  
18 file your written opposition with the Office of the Clerk, United States District Court,  
19 255 East Temple Street, Los Angeles, California 90012-3332, and serve the same on  
20 the undersigned not later than 21 days prior to the hearing.

21 **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the  
22 above date, the Court may grant the requested relief without further notice. This  
23 Motion is made following the conference of counsel pursuant to L.R. 7 3.

24 Dated: March 20, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Edward Fates

EDWARD G. FATES  
Attorneys for Receiver  
Thomas A. Seaman

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Receiver was appointed by this Court with full powers of an equity  
4 receiver, and ordered, among other things, to take possession of and assume  
5 authority and control over the receivership estate, including that certain real property  
6 located at 345 Oak Mountain Road, Bradbury, California ("Property") – a luxury  
7 single-family residence. Declaration of Thomas A. Seaman filed herewith  
8 ("Seaman Decl."), ¶ 3.

9 The Property was purchased on March 21, 2014, for \$4.48 million. Title was  
10 originally taken in the names of Defendant Steve Chen and his wife, Luyang Li, but  
11 was later transferred to Ahome Real Estate, LLC. The Property is approximately  
12 4,698 square feet and has five bedrooms. The Property was used by Defendants to  
13 entertain investors and guests. Shortly after his appointment, the Receiver secured  
14 the Property. *Id.* at ¶ 4.

15 Given that maintaining the Property entails significant carrying costs to the  
16 receivership estate, including costs for security, maintenance, insurance, and  
17 property taxes, and that the Property has no business purpose for the benefit of the  
18 Receivership Entities, the Receiver listed the Property for sale through licensed  
19 broker, Keller Williams Realty ("Broker"). *Id.* at ¶ 5.

20 The Receiver prepared the Property for sale by repairing certain water leaks,  
21 and making minor cosmetic improvements such as removing wallpaper, painting of  
22 a few walls and adding annual color to the landscaping. The Property was also  
23 staged with furniture. The broker (at its expense) created a video of the Property to  
24 market the Property for sale. The Property was listed for sale on October 17, 2016,  
25 for \$5 million. At the \$5 million price, demand was weak. On January 18, 2017,  
26 after reviewing recent comparable sales and listings, and having received an  
27 appraisal of \$4.2 million, the listing price was lowered to \$4.299 million. This  
28 resulted in more activity and multiple offers for the Property were received, the

1 highest of which was \$3.8 million. The Receiver negotiated with the offering  
2 parties and a bidding war ensued, resulting in a high offer of \$4,380,000 from Meide  
3 Jiang ("Buyer"), which the Receiver accepted, subject to Court approval. There are  
4 no contingencies to the sale other than Court approval. *Id.* at ¶ 6.

5 In accordance with the Receiver's acceptance, the Receiver and Buyer entered  
6 into a Residential Purchase Agreement and Joint Escrow Instructions  
7 ("Agreement"). Among other things, the Agreement specifies the sale is subject to  
8 Court approval and is on an "AS IS" basis. The Agreement is attached as Exhibit A  
9 to the Seaman Declaration filed herewith. *Id.* at ¶ 7.

10 In his reasonable business judgment, the Receiver believes the Agreement,  
11 obtained through the commercially reasonable and customary method of listing the  
12 property with a licensed broker and after arm's length negotiations with Buyer,  
13 reflects the fair market value of the Property. *Id.* at ¶ 8. Moreover, the sale is  
14 subject to overbid and public auction procedures discussed below. Accordingly, the  
15 Receiver respectfully requests this Court grant this Motion and approve and  
16 authorize: (1) the sale of the Property, and (2) payment of the Broker's commission.

## 17 **II. PROCEDURAL BACKGROUND**

18 On September 28, 2015, the Court appointed the Receiver on a temporary  
19 basis as part of its Temporary Restraining Order and Orders (1) Freezing Assets;  
20 (2) Appointing a Receiver, (3) Prohibiting the Destruction of Documents;  
21 (4) Granting Expedited Discovery; and (5) Requiring Accountings; and Order to  
22 Show Cause Why a Preliminary Injunction Should Not Be Granted ("TRO"). Dkt.  
23 No. 8. On October 6, 2015, the Court entered a Preliminary Injunction and Orders:  
24 (1) Freezing Assets; (2) Appointing a Receiver; (3) Prohibiting the Destruction of  
25 Documents; and (4) Requiring Accountings ("PI Order"), which included  
26 appointment of the Receiver on a permanent basis. Dkt. No. 13. Hereinafter, the  
27 TRO and PI Order are collectively referred to as the "Appointment Orders."  
28

1 **III. TERMS OF THE AGREEMENT**

2 A copy of the Agreement is attached as Exhibit A to the Seaman Declaration.  
3 Its terms are summarized as follows:<sup>1</sup>

4 **Court approval.** All aspects of the Agreement and the sale are subject to  
5 approval by the Court.

6 **Purchase Price.** \$4,380,000.

7 **Closing Date.** Escrow to close once Court approval of the sale is granted.

8 **Deposit.** Buyers have deposited \$109,500 into escrow, refundable only if the  
9 Court does not approve the sale to Buyer.

10 **As Is Purchase.** Buyer agrees to purchase the Property on an "AS IS" basis.

11 **Broker's Commission.** By separate agreement, the Receiver has agreed,  
12 subject to Court approval, to pay Broker a commission of 5% of the final purchase  
13 price. Pursuant to that agreement, Broker will compensate cooperating and referring  
14 brokers, as applicable. Broker has invested substantial time into preparing the  
15 Property for sale, locating potential purchasers, marketing the property to them,  
16 negotiating terms, and preparing sale documents.

17 **IV. ARGUMENT**

18 "The power of a district court to impose a receivership or grant other forms of  
19 ancillary relief does not in the first instance depend on a statutory grant of power  
20 from the securities laws. Rather, the authority derives from the inherent power of a  
21 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
22 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
23 and efficient administration of the estate by the district court for the benefit of  
24 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
25 of a receiver is authorized by the broad equitable powers of the court, any  
26

27 \_\_\_\_\_  
28 <sup>1</sup> The terms of the Agreement are summarized herein for convenience only. In the event of any conflict between the Agreement and the summary provided herein, the Agreement governs and controls.

1 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
2 953 F.2d 1560, 1569 (11th Cir. 1992).

3 District courts have the broad power of a court of equity to determine the  
4 appropriate action in the administration and supervision of an equity receivership.  
5 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth  
6 Circuit explained:

7 A district court's power to supervise an equity receivership and to  
8 determine the appropriate action to be taken in the administration of  
9 the receivership is extremely broad. The district court has broad  
10 powers and wide discretion to determine the appropriate relief in an  
11 equity receivership. The basis for this broad deference to the district  
12 court's supervisory role in equity receiverships arises out of the fact  
13 that most receiverships involve multiple parties and complex  
14 transactions. A district court's decision concerning the supervision  
15 of an equitable receivership is reviewed for abuse of discretion.

16 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115  
17 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,  
18 and 'we generally uphold reasonable procedures instituted by the district court that  
19 serve th[e] purpose' of orderly and efficient administration of the receivership for  
20 the benefit of creditors.").

21 Accordingly, this Court has broad equitable powers and discretion in  
22 formulating procedures, schedules and guidelines for administration of the  
23 receivership estate and disposition of receivership assets.

24 **A. The Proposed Sale**

25 It is generally conceded that a court of equity having custody and control of  
26 property has power to order a sale of the same in its discretion. *See, e.g., Elliott*,  
27 *supra*, 953 F.2d at 1566 (finding that the District Court has broad powers and wide  
28 discretion to determine relief in an equity receivership). "The power of sale  
necessarily follows the power to take possession and control of and to preserve  
property." *See also SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144  
(9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)  
(*citing* 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed.

1 1992) (citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). "When a court of  
 2 equity orders property in its custody to be sold, the court itself as vendor confirms  
 3 the title in the purchaser." 2 Ralph Ewing Clark, *Treatise on Law & Practice of*  
 4 *Receivers* § 487).

5 "A court of equity, under proper circumstances, has the power to order a  
 6 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*  
 7 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing  
 8 Clark, *Treatise on Law & Practice of Receivers* § 500. To that end, a federal court  
 9 is not limited or deprived of any of its equity powers by state statute. *Beet Growers*  
 10 *Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925) (state statute  
 11 allowing time to redeem property after a foreclosure sale not applicable in a  
 12 receivership sale).

13 Generally, when a court-appointed receiver is involved, the receiver, as agent  
 14 for the court, should conduct the sale of the receivership property. *Blakely Airport*  
 15 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156  
 16 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an  
 17 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing  
 18 Clark, *Treatise on Law & Practice of Receivers* §§ 342, 344, 482(a), 487, 489, 491.  
 19 "In authorizing the sale of property by receivers, courts of equity are vested with  
 20 broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357  
 21 (9th Cir. 1925).

22 **B. 28 U.S.C. § 2001**

23 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of  
 24 real property under subsection (a) and specific requirements for private sales of real  
 25 property under subsection (b). Although both involve unnecessary cost and delay,  
 26 the cost and delay of a public sale are significantly less than those for a private sale.  
 27 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at \*5 (N.D. Cal. 2013)  
 28 ("Section 2001 sets out two possible courses of action: (1) property may be sold in

1 public sale; or (2) property may be sold in a private sale, provided that three separate  
2 appraisals have been conducted, the terms are published in a circulated newspaper  
3 ten days prior to sale, and the sale price is no less than two-thirds of the valued  
4 price."). Therefore, by proceeding under Section 2001(a), the receivership estate  
5 can avoid the significant costs and delay of (a) the Court having to appoint three  
6 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

7 The requirements of a public sale under Section 2001(a) are that notice of the  
8 sale be published as proscribed by Section 2002 and a public auction be held at the  
9 courthouse "as the court directs." 28 U.S.C. § 2001(a); *SEC v. Capital Cove*  
10 *Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856, at \*13 (C.D. Cal. 2015); *SEC v.*  
11 *Kirkland*, 2007 U.S. Dist. LEXIS 45353, at \*5 (M.D. Fla. 2007). In terms of  
12 publication of notice, Section 2002 provides:

13 A public sale of realty or interest therein under any order, judgment  
14 or decree of any court of the United States shall not be made without  
15 notice published once a week for at least four weeks prior to the sale  
16 in at least one newspaper regularly issued and of general circulation  
17 in the county, state, or judicial district of the United States wherein  
18 the realty is situated.

19 If such realty is situated in more than one county, state, district or  
20 circuit, such notice shall be published in one or more of the counties,  
21 states, or districts wherein it is situated, as the court directs. The  
22 notice shall be substantially in such form and contain such  
23 description of the property by reference or otherwise as the court  
24 approves. The court may direct that the publication be made in other  
25 newspapers.

26 This section shall not apply to sales and proceedings under Title 11  
27 or by receivers or conservators of banks appointed by the  
28 Comptroller of the Currency.

29 The notice of sale is sufficient if it describes the property and the time, place,  
30 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*  
31 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to  
32 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and  
33 binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction  
34 of the Receiver, that it has the current ability to consummate the purchase of the

1 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,  
2 2009 U.S. Dist. LEXIS 111381, at \*8 (E.D. Mo. 2009).

3  
4 **V. DISCUSSION**

5 Here, the proposed sale to Buyer should be approved. The Property has been  
6 fully and properly exposed to the market by Broker over the last four months  
7 through the customary means of listing the property on the Multiple Listing Service  
8 ("MLS"), advertising, and holding open houses. In response, the Receiver received  
9 and evaluated multiple offers, negotiated with the offering parties, and conducted a  
10 competitive bidding process. Seaman Decl., ¶ 9.

11 As a result of this process, the high offer was from Buyer in the amount of  
12 \$4,380,000. The Receiver believes the proposed sale represents the fair market  
13 value and will generate the highest and best recovery from the Property. *Id.* at ¶ 10.

14 Moreover, the proposed sale is subject to overbid and public auction. The  
15 Receiver proposes to conduct a public auction consistent with the requirements of  
16 Section 2001(a). Specifically, the Receiver will publish the following notice of the  
17 sale once a week for four weeks in the Los Angeles Times:

18 In the action pending in U.S. District Court for the Central District  
19 of California, Case No. 16-CV-07425-RGK-PLA, Securities and  
20 Exchange Commission v. Steve Chen et al., notice is hereby given  
21 that the court-appointed receiver will conduct a public auction for  
22 the residential real property located at 345 Oak Mountain Road,  
23 Bradbury, California. Sale is subject to Court confirmation after the  
24 auction is held. Minimum bid price is \$4,600,000. The auction will  
25 take place on April 24, 2017, at 9:00 a.m. in Courtroom 850 to the  
26 United States Courthouse, 255 East Temple Street, Los Angeles,  
27 California. To be allowed to participate in the auction, prospective  
28 purchasers must meet certain bid qualification requirements,  
including submitting a signed purchase and sale agreement, an  
earnest money deposit of \$109,500, and proof of funds. All bidders  
must be qualified by 5:00 p.m. PST on April 14, by submitting the  
required materials to the Thomas Seaman at 3 Park Place, Suite 550,  
Irvine California, 92614. If interested in qualifying as a bidder,  
please contact Eva Lin at (626) 807-6581 or  
eva@linrealtygroup.com.

29 *Id.* at ¶ 11.

30

1 In order to conduct an orderly auction and provide sufficient time for the  
2 publication of notices discussed above, the Receiver will require bidders to complete  
3 the above steps by April 14, 2017 ("Bid Qualification Deadline"), and conduct the  
4 live public auction at the hearing on April 24, 2017. *Id.* at ¶ 12.

5 The Receiver will inform all interested persons of the opportunity to overbid  
6 at the public auction, provided they qualify themselves to bid by the Bid  
7 Qualification Deadline by (a) signing a purchase and sale agreement for the  
8 properties on the same terms and conditions as Buyer, but with a purchase price of  
9 at least \$4,600,000, (b) providing the Receiver with an earnest money deposit of  
10 \$109,500, and (c) providing proof of funds necessary to close the sale transaction in  
11 the form of a current bank statement, cashier's check delivered to the Receiver, or  
12 other evidence deemed sufficient by the Receiver. *Id.* at ¶ 13.

13 In the event one or more prospective purchasers qualify themselves to bid, the  
14 auction will be conducted at the hearing as noted above and bids will be allowed in  
15 increments of \$25,000. The Receiver will then file a notice advising the Court of  
16 the result of the auction (*i.e.*, the highest bid) and seek entry of an order confirming  
17 the sale. Earnest money deposits provided by bidders who are unsuccessful will be  
18 promptly returned to them. In the event no prospective purchasers qualify  
19 themselves to bid by the Bid Qualification Deadline, the Receiver will notify the  
20 Court and seek entry of an order approving the sale to Buyer. *Id.* at ¶ 14.

21 **A. Additional Relief**

22 Pursuant to its broad equitable powers with respect to the administration of  
23 receivership assets, the Receiver requests that the Court authorize payment from the  
24 proceeds of sale of the Property, the valid liens,<sup>2</sup> taxes, and any other claims on the  
25 property, subject to any objections to such liens, taxes, or claims by the Receiver.

26  
27  
28 <sup>2</sup> The Receiver is not aware of any valid liens on the Property, which was  
purchased with all cash.

1 Finally, the Receiver requests authority to pay Broker a commission in the  
2 amount of 5% of the final purchase price. Based on his extensive experience in real  
3 estate transactions, the Receiver believes that such commission is commercially  
4 reasonable and consistent with real estate industry standards. *Id.* at ¶ 15.

5 **VI. CONCLUSION**

6 For the reasons set forth herein, the Receiver respectfully requests entry of an  
7 Order approving and authorizing: (1) sale of the Property to Buyer, and (2) payment  
8 of a 5% commission to Broker from the sale proceeds.

9  
10 Dated: March 20, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Edward Fates          

EDWARD G. FATES  
Attorneys for Temporary Receiver  
THOMAS A. SEAMAN

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